

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**JAMES F. STILLMAN**  
Claimant

VS.

**CITY OF WICHITA**  
Respondent  
Self-Insured

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Docket No. 228,542

**ORDER**

Claimant appealed the August 30, 2001, Award entered by Administrative Law Judge John D. Clark. The Appeals Board (Board) heard oral argument on March 29, 2002.

**APPEARANCES**

Stephen J. Jones of Wichita, Kansas, appeared for the claimant. Edward D. Heath, Jr., of Wichita, Kansas, appeared for respondent, self-insured.

**RECORD AND STIPULATIONS**

The Board considered the record and adopts the stipulations listed in the Administrative Law Judge's Award. In addition, during oral argument to the Board, the parties agreed that the April 12, 2001 deposition of C. Reiff Brown, M.D., taken in Docket No. 236,434 was intended to be and should also be considered a part of the record in this docketed claim. Thereafter, the parties entered into a written stipulation dated March 20, 2002, that Dr. Brown's April 12, 2001 deposition may be considered by the Board in this claim.

### ISSUES

Claimant alleges an accidental injury occurred in the course of his employment as a firefighter with the City of Wichita . The dates claimant alleges accidents occurred are a series beginning October 21, 1995, and continuing each and every working day thereafter through June 28, 1998. Judge Clark found that claimant had not sustained his burden of proof that the work activities he performed for respondent were the cause of the injuries. Instead, the Administrative Law Judge (ALJ) believed that claimant's back problems were caused when claimant fell down some steps while on vacation in Colorado. The ALJ specifically noted that claimant's description of the Colorado accident changed over time in order to minimize its severity.

The first issue then is whether claimant's injury and resulting disability were caused by an accident or accidents that arose out of and in the course of his employment with respondent. If the claim is found compensable then the nature and extent of claimant's disability, claimant's average weekly wage and his entitlement to medical benefits are also at issue. Furthermore, respondent denies notice and written claim were timely made.

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

The ALJ found claimant was not entitled to an award because the injury to claimant's back was not proven to be work-related. The Board agrees with the analysis of the evidence and law as set forth in the Award and adopts the ALJ's findings, conclusions and orders as it own.

Claimant began working for respondent as a firefighter in August 1990. Claimant is alleging a work-related back injury occurred on October 21, 1995, and was aggravated each and every working day thereafter through his last day of employment with respondent which was in November 1998 when he terminated his employment and began receiving non-service connected disability payments.

However, claimant was seen by Dr. Anthony Pollock in May 1998 at which time claimant reported the September 1997 fall in Colorado as slipping down some railroad ties, the distance of about six feet, and landing on his buttocks. Claimant only told Dr. Pollock about the medical treatment he had received since October 1997. Claimant did not give Dr. Pollock a history of any back injuries or treatments occurring before the September 1997 accident in Colorado. Claimant likewise did not report to Dr. Pollock that the September 1997 fall was caused by his leg giving out due to back pain. A CT myelogram was performed which revealed L4-5 disk herniation, spinal stenosis and some impingement of the L-5 nerve root. Dr. Pollock performed surgery on June 29, 1998. Between May 1998 and the last time claimant saw Dr. Pollock there was no mention or history given that his back problem was work-related.

The first issue before the Board is whether the slip and fall in Colorado while claimant was on vacation in September 1997 was the proximate cause of the surgery performed by Dr. Pollock.

Dr. Pollock wrote a letter on claimant's behalf to the City of Wichita on October 13, 1998, addressing claimant's permanent impairment of function. After Dr. Pollock wrote this letter he received correspondence from claimant advising him that he had other injuries sustained at work in 1992, 1993 and 1997. This was the first time Dr. Pollock had been advised of any prior on-going back problems. But Dr. Pollock later testified that if he had been asked to also express his opinion as to the cause of the surgery and the impairment of function in his October 13, 1998 letter, he would have stated the surgery and disability were all related to the fall in Colorado.

Claimant was seen by Dr. Reiff Brown for an independent medical examination. Dr. Brown believed the fall in Colorado caused only a temporary injury, but this opinion was based on the history that claimant was off work for six weeks, was returned to work and that gradually the pain subsided to what it was before that fall. The Board finds this was not an accurate history and, therefore, gives Dr. Brown's opinion less weight.

While claimant testified that the initial accident which affected his back was in October 1992, followed by a series of accidents and aggravations, including an accident on October 21, 1995, the prior back injuries sustained by claimant were not a significant issue with claimant performing his regular job duties until after the fall in September 1997 while on vacation in Colorado. Accordingly, the Board finds that the September 1997 fall in Colorado constituted an intervening accident and injury which was the proximate cause of the surgery performed by Dr. Pollock in June of 1998.

#### **Award**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge John D. Clark on August 30, 2001, should be and is hereby affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ September 2002.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c:     Stephen J. Jones, Attorney for Claimant  
       Edward D. Heath, Jr., Attorney for Respondent  
       John D. Clark, Administrative Law Judge  
       Director, Kansas Division of Workers Compensation